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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 BTG180, LLC, et al.,

2:14-CV-188 JCM (NJK)

9 Plaintiff(s),

10 v.

11 FUN CLUB USA, INC., et al.,

12 Defendant(s).
13

14 **ORDER**

15 Presently before the court is plaintiffs BTG180, LLC's and Randall Jeffers' motion for leave
16 to amend complaint and for joinder of an additional defendant. (Doc. # 12). Defendants Fun Club
17 USA, Inc., Robert Craddock, and Sylvia Salgado Craddock filed a response in opposition (doc. # 13)
18 and plaintiffs filed a reply (doc. # 16).

19 Defendants' opposition included a counter-motion to dismiss and compel arbitration. (Doc.
20 # 14). Plaintiffs' reply also responded to defendants' counter-motion. (Doc. # 16).

21 **I. Background**

22 Plaintiff BTG180 is a multi-level marketing network. (Doc. # 1 at p. 14).

23 Plaintiffs filed this action on February 5, 2014, alleging several claims against defendants:
24 (1) cybersquatting, (2) trademark infringement (violations of both state law and common law), (3)
25 wrongful use of computer, (4) misappropriation of trade secret (violations of both state law and
26 common law), (5) wrongful interference with economic relations, (6) breach of contract, (7) unjust
27 enrichment, and (8) defamation. (Doc. # 1 at p. 1). Plaintiffs also assert piercing the corporate veil
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1 or alter ego as theories of liability. (Doc. # 1 at p. 1).

2 Plaintiff BTG180 entered into a contract with defendants Robert Craddock and Fun Club
3 USA relating to marketing services. (Doc. # 1 at p. 3). The contract contained an arbitration clause
4 that stated: “Any disputes hereunder shall be subject to binding arbitration under the rules of the
5 American Arbitration Association.” (Doc. # 14 at p. 12).

6 The court will address defendants’ counter-motion to dismiss and compel arbitration before
7 addressing plaintiffs’ motion to amend.

8 **II. Counter-Motion to Dismiss and Compel Arbitration**

9 *A. Legal Standard*

10 Section 2 of the Federal Arbitration Act (“FAA”) provides that:

11 A written provision in . . . a contract evidencing a transaction involving commerce
12 to settle by arbitration a controversy thereafter arising out of such contract or
13 transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds
as exist at law or in equity for the revocation of any contract.

14 9 U.S.C. § 2. “In enacting § 2 of the federal Act, Congress declared a national policy favoring
15 arbitration and withdrew the power of the states to require a judicial forum for the resolution of
16 claims which the contracting parties agreed to resolve by arbitration.” *Southland Corp. v. Keating*,
17 465 U.S. 1, 10 (1984). Courts shall place arbitration agreements “upon the same footing as other
18 contracts.” *Volt Info. Sciences, Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 478
19 (1989).

20 Additionally, § 3 of the FAA permits a court to stay an action while the parties proceed to
21 arbitration. 9 U.S.C § 3. “Despite the mandatory language, the Ninth Circuit has interpreted this
22 provision to allow dismissal of the action in certain circumstances.” *Germaine Music v. Universal*
23 *Songs of Polygram*, 275 F. Supp. 2d 1288, 1299 (D. Nev. 2003).

24 Finally, § 4 of the FAA states that “upon being satisfied that the making of the agreement for
25 arbitration or the failure to comply therewith is not in issue, the court shall make an order directing
26 the parties to proceed to arbitration in accordance with the terms of the agreement.” 9 U.S.C. § 4.

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1 *B. Discussion*

2 Defendants argue that the arbitration clause in the contract between BTG180 and Fun Club
3 USA should be enforced and that the entire complaint should be stayed and arbitration compelled.
4 (Doc. # 14 at p. 5). Plaintiffs contest the applicability of the clause on two grounds. (Doc. # 16 at p.
5 4). First, plaintiffs argue that not all claims in the complaint arise under the arbitration clause of the
6 contract. (Doc. # 16 at p. 4). Second, plaintiffs argue that the contract was only between BTG180
7 and Fun Club USA and so does not bind all plaintiffs or all defendants to arbitration of disputes.
8 (Doc. # 16 at p. 4).

9 The Ninth Circuit has interpreted the phrase “arising hereunder” as relatively narrow
10 compared to other phrases appearing in arbitration clauses. *Mediterranean Enter.*, 708 F.2d at 1464.
11 Such an arbitration clause restricts arbitration to matters relating to interpretation and performance
12 under the contract. *Id.* On the other hand the phrase “arising out of or relating to this agreement” is
13 considered a “broad arbitration clause.” *Id.* (citations omitted).

14 The court finds that the language—from the present contract—“[a]ll disputes hereunder” is
15 similar to that of “arising hereunder.” The clause is therefore relatively narrow and does not imply
16 that any dispute tangentially related to the contract must be resolved through arbitration. Therefore,
17 the contract calls only for arbitration of disputes relating to interpretation of the contract and
18 performance under the contract.

19 Plaintiffs assert that the individual defendants in this case were not signatories to the
20 arbitration agreement, and therefore the claims against them are not subject to mandatory arbitration.
21 However, the named individual defendants were agents of the corporate defendants, and were thus
22 bound by the arbitration agreements. *See Comer v. Micor, Inc.*, 436 F.3d 1098, 1101 (9th Cir. 2006).
23 It would thwart the purpose of the Federal Arbitration Act if parties could renege on a promise to
24 resolve claims through arbitration simply by naming individuals as defendants instead of a
25 corporation with which they contracted. Accordingly, the court finds that defendants Craddock and
26 Salgado Craddock were subject to the arbitration agreement.

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Therefore, defendants' counter-motion to compel arbitration will be granted as to plaintiffs' claims for breach of contract and unjust enrichment, which both relate to performance under the contract. The motion will be denied as to the remaining claims, which fall outside the scope of the arbitration agreement.

III. Motion to Amend

A. Legal Standard

Federal Rule of Civil Procedure 15(a) provides that leave to amend "shall be freely given when justice so requires." The Supreme Court has interpreted Rule 15(a) and confirmed the liberal standard district courts must apply when granting such leave. In *Foman v. Davis*, 371 U.S. 178 (1962), the Court explained: "In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc.—the leave sought should, as the rules require, be 'freely given.'" *Id.* at 182. The local rules of federal practice in the District of Nevada require that a party submit a proposed, amended pleading along with a motion to amend. D. Nev. R. 15-1(a).

Rule 16(b) provides that "[a] schedule shall not be modified except upon a showing of good cause and by leave of the district judge." Fed. R. Civ. P. 16(b). *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992). If the moving party demonstrates good cause under Rule 16(b), then it must then establish that the proposed amendment is permissible under the factors germane to Rule 15. *Id.* "[T]he existence or degree of prejudice to the party opposing the modification" may supply "additional reasons to deny" a request for leave to amend, but "the focus of the inquiry is upon the moving party's reason for seeking modification. If that party was not diligent, the inquiry should end." *Id.*

B. Discussion

Defendants' only argument in opposition to the motion to amend is that the joinder of the additional defendant is requested in order to "defeat the jurisdiction of the arbitration agreement." (Doc. # 13 at p. 2). It is not apparent to the court how the amendment would change the foregoing

1 analysis of the arbitration agreement.

2 Therefore plaintiffs' motion to amend the complaint and for joinder of additional defendants
3 will be granted.

4 **IV. Conclusion**

5 Plaintiffs' motion to amend the complaint and for joinder of additional defendants is granted.

6 Defendants' counter-motion to dismiss and compel arbitration is granted regarding the breach
7 of contract and unjust enrichment claims. Defendants' counter-motion is denied regarding all other
8 claims.

9 Accordingly,


10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiffs' motion to
11 amend (doc. # 12) be, and the same hereby is, GRANTED.

12 IT IS FURTHER ORDERED that defendants' motion to dismiss and compel arbitration (doc.
13 # 14) is GRANTED in part and DENIED in part, consistent with the foregoing.

14 IT IS FURTHER ORDERED that defendants' motion to dismiss and compel arbitration (doc.
15 # 15) is DENIED as duplicative.

16 IT IS FURTHER ORDERED that plaintiffs file the proposed, amended complaint within
17 seven days of the entry of this order.

18 DATED June 27, 2014.

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21 **UNITED STATES DISTRICT JUDGE**